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HIGH SIERRA HIKERS ASSOCIATION

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

BZ

11
12 HIGH SIERRA HIKERS ASSOCIATION,

13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF THE
INTERIOR, NATIONAL PARK SERVICE, and
16 SEQUOIA AND KINGS CANYON NATIONAL
PARKS

17 Defendants.
18

CV

08

1079

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF

19
20 NATURE OF THE COMPLAINT

21 1. Through this action, brought under the Freedom of Information Act ("FOIA"),
22 5 U.S.C. § 552, and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706, Plaintiff
23 High Sierra Hikers Association seeks access to government records relating to the National Park
24 Service's issuance of a Record of Decision for the Final General Management Plan for Sequoia
25 and Kings Canyon National Parks.

26 2. The records requested by the High Sierra Hikers Association are likely to
27 contribute significantly to public understanding of the operations or activities of the government,
28 in accordance with 43 C.F.R. § 2.19.

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1 11. The Park Service's Pacific West Region office ("Regional Office") is located in
2 Oakland, California.

3 12. Defendant Sequoia and Kings Canyon National Parks ("SEKI") is the
4 administrative branch of the Park Service responsible for managing Sequoia National Park and
5 Kings Canyon National Park.

6 13. SEKI's office is located in Ash Mountain, California, and its mailing address is
7 located in Three Rivers, California.

8 **RELEVANT FACTS**

9 14. On March 23, 2005, HSHA sent a FOIA request to the Freedom of Information
10 Act Officer at SEKI requesting records regarding the SEKI General Management Plan (the
11 "Plan") and the Park Service's planning process for developing the Plan.

12 15. A true and correct copy of this FOIA request is attached to this Complaint as
13 **Exhibit A.**

14 16. More specifically, HSHA sought the following five categories of documents in its
15 FOIA request:

- 16 a. all comments received by the Park Service in response to the Draft
17 Environmental Impact Statement for the SEKI Draft Plan, including all written
18 communications and all records of all oral communications;
19 b. any and all communications regarding the SEKI Plan and its planning process
20 received by the Park Service from commercial pack stock enterprises that operate
21 within SEKI;
22 c. any and all communications regarding the SEKI Plan and its planning process
23 received by the Park Service from the Backcountry Horsemen of California and the
24 Backcountry Horsemen of America, as well as any and all Park Service responses to
25 those communications;
26 d. any and all communications regarding the SEKI Plan and its planning process
27 received by the Park Service from elected officials, as well as any and all Park Service
28 responses to those communications; and

e. all internal Park Service communications regarding the Draft Environmental Impact Statement and development of the Draft Plan that were created prior to March 23, 2005.

(See Exhibit A at 1.)

17. HSHA included a Justification for Fee Waiver with its March 23, 2005 FOIA request. (See Exhibit A at 3-5.)

18. On August 23, 2005, the Park Service's Regional Office denied HSHA's fee waiver request.

19. A true and correct copy of this denial is attached to this Complaint as **Exhibit B**.

20. On September 30, 2005, HSHA appealed the Regional Office's denial of the fee waiver request.

21. A true and correct copy of this first appeal is attached to this Complaint as **Exhibit C**.

22. On November 1, 2005, the Department's FOIA Appeals Office resolved HSHA's appeal in HSHA's favor.

23. A true and correct copy of this determination is attached to this Complaint as **Exhibit D**.

24. At that time, the Department's FOIA Appeals Office directed the Regional Office to proceed with processing HSHA's FOIA request. (See Exhibit D at 2.)

25. On January 5, 2006, the Regional Office issued a partial "interim response" to HSHA's FOIA request, which stated that documents responsive to HSHA's first four requests would be mailed separately and that the Regional Office would complete its review of electronic files responsive to HSHA's fifth request by February 15, 2006.

26. A true and correct copy of this "interim response" is attached to this Complaint as **Exhibit E**.

27. On February 14, 2006, HSHA filed a second appeal requesting that the Department's FOIA Appeals Office review the Regional Office's partial "interim response."

1 28. A true and correct copy of this second appeal is attached to this Complaint as
2 **Exhibit F.**

3 29. In the second appeal, HSHA pointed out that the Regional Office had failed to
4 comply with FOIA's time constraints. (*See* Exhibit F at 1.)

5 30. HSHA also explained that the Regional Office failed to state whether the
6 documents sent to HSHA constituted all of the responsive records in the Park Service's files or
7 whether the Park Service intended to withhold any records. (*See* Exhibit F at 1-2.)

8 31. Additionally, HSHA stated in its second appeal that the records produced
9 pertained only to HSHA's first request, but that no documents responsive to the second, third, or
10 fourth requests were produced by the Regional Office. (*See* Exhibit F at 2.)

11 32. Finally, HSHA explained that having the Regional Office search electronic files —
12 as described in the "interim response" — was insufficient to satisfy the fifth request. (*See*
13 Exhibit F at 2.)

14 33. Subsequently, the Regional Office issued its "final response" to HSHA's FOIA
15 request in a letter dated February 23, 2006, but postmarked March 3, 2006.

16 34. A true and correct copy of this "final response" is attached to this Complaint as
17 **Exhibit G.**

18 35. A true and correct copy of the certified mail envelope, postmarked March 3, 2006,
19 is attached to this Complaint as **Exhibit H.**

20 36. In this "final response," the Regional Office claimed that any remaining records
21 were being withheld pursuant to an exemption under 5 U.S.C. § 552(b)(5). (*See* Exhibit G
22 at 1-2.)

23 37. HSHA filed a third appeal to the Department's FOIA Appeals Office on March 31,
24 2006, in which it stated that the "final response" was inadequate and incomplete.

25 38. A true and correct copy of this third appeal is attached to this Complaint as
26 **Exhibit I.**

27 39. Again, HSHA pointed out that the Park Service did not respond within the time
28 constraints mandated by FOIA. (*See* Exhibit I at 1-2.)

1 40. As in its second appeal, HSHA also explained in its third appeal that the Regional
2 Office failed to comply with FOIA's requirement that the Park Service state whether the
3 documents sent to HSHA constitute all of the responsive records in the Park Service's files or
4 whether the Park Service intended to withhold any records. (*See* Exhibit I at 2.)

5 41. In addition, HSHA indicated that the Regional Office failed to provide any
6 documents responsive to the second, third, or fourth requests and that the records provided in
7 response to the fifth request were not fully responsive because the Regional Office searched the
8 files of only two employees. (*See* Exhibit I at 2-3.)

9 42. Finally, HSHA stated that the Regional Office failed to comply with FOIA by
10 refusing to provide reasonably segregable portions of withheld records. (*See* Exhibit I at 3.)

11 43. On April 18, 2006, Darrell Strayhorn of the Department's FOIA Appeals Office
12 sent a letter to HSHA in which she acknowledged receipt of HSHA's second appeal, but found it
13 to be premature given that the Regional Office's response was merely "interim."

14 44. A true and correct copy of that letter is attached to this Complaint as **Exhibit J**.

15 45. On April 20, 2006, Ms. Strayhorn sent a letter to HSHA acknowledging receipt of
16 its third appeal, assigning an appeal number (2006-118), and stating that a decision on the appeal
17 would be reached within 20 days, as required by FOIA.

18 46. A true and correct copy of that letter is attached to this Complaint as **Exhibit K**.

19 47. On November 20, 2006, the Park Service published the proposed *Final General*
20 *Management Plan and Comprehensive River Management Plan/Final Environmental Impact*
21 *Statement for Sequoia and Kings Canyon National Parks and Middle and South Forks of the*
22 *Kings River and North Fork of the Kern River* in the Federal Register (Vol. 71, No. 223,
23 Page 67158).

24 48. HSHA did not hear back from the Department's FOIA Appeals Office regarding
25 its third appeal until February 26, 2007, when LaRima Lane of the Department's FOIA Appeals
26 Office left a voicemail message for HSHA inquiring whether it was still interested in pursuing its
27 third appeal.

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1 49. On February 27, 2007, HSHA informed Ms. Lane that HSHA still wished to
2 pursue its third appeal, in response to which Ms. Lane assured HSHA that the appeal would be
3 addressed within 20 days.

4 50. HSHA did not receive a response, however, and on May 23, 2007, HSHA sent a
5 letter to Ms. Strayhorn summarizing the events described above and requesting a response.

6 51. A true and correct copy of that letter is attached to this Complaint as **Exhibit L**.

7 52. Six months later, having received no response from the Department's FOIA
8 Appeals Office, HSHA sent another letter to Ms. Strayhorn, dated December 4, 2007, in which
9 HSHA advised Ms. Strayhorn that the Department's failure to resolve HSHA's third appeal
10 violated FOIA and requested that HSHA's third appeal be resolved by December 21, 2007.

11 53. A true and correct copy of that letter is attached to this Complaint as **Exhibit M**.

12 54. On December 20, 2007, the Park Service published its Record of Decision for the
13 Plan in the Federal Register (Vol. 72, No. 244, Page 72374).

14 55. To date, the Department has not resolved HSHA's third appeal or responded to
15 HSHA's May 23 or December 4, 2007 letters.

16 56. On information and belief, HSHA contends that the Park Service's Plan for SEKI
17 likely violates federal law.

18 57. On information and belief, to properly and completely evaluate the Record of
19 Decision and the extent to which it violates federal law, HSHA must have an opportunity to
20 review the records sought through its March 23, 2005 FOIA request.

21 **CLAIMS FOR RELIEF**

22 **COUNT 1: FAILURE TO PRODUCE RECORDS**

23 (In Violation of 5 U.S.C. § 552(a))

24 (All Defendants)

25 58. HSHA repeats the allegations set forth above as if stated fully herein.

26 59. HSHA properly requested the records described above from the Department, Park
27 Service, and SEKI, in compliance with the requirements of 5 U.S.C. § 552 and 43 C.F.R.
28 §§ 2.7-2.11.

1 60. The records requested by HSHA were under the custody and/or control of the
2 Department, Park Service, and/or SEKI.

3 61. The Department, Park Service, and SEKI failed to produce the requested records
4 within the 20-day timeframe required by FOIA in violation of 5 U.S.C. § 552(a)(6)(A)(i), and the
5 Department's internal FOIA regulations, 43 C.F.R. § 2.12.

6 62. The Department, Park Service, and SEKI failed to comply with FOIA, 5 U.S.C.
7 § 552(a)(6)(A)(i), and the Department's internal FOIA regulations, 43 C.F.R. § 2.21, which
8 require an agency to state whether the documents sent to a requesting party constitute all of the
9 responsive records in an agency's files or whether the agency intends to withhold any records.

10 63. The Department, Park Service, and SEKI failed to provide any records responsive
11 to HSHA's second, third, or fourth record requests in violation of 5 U.S.C. § 552(a)(3) and
12 43 C.F.R. § 2.21.

13 64. The Department, Park Service, and SEKI failed to comply with FOIA in
14 responding to HSHA's fifth record request by failing to perform a proper search, in violation of
15 5 U.S.C. § 552(a)(3)(C) and 43 C.F.R. § 2.21, because Defendants only searched the files of two
16 individual employees.

17 65. On information and belief, to the extent Defendants located documents responsive
18 to HSHA's fifth record request, Defendants improperly withheld those documents in violation of
19 5 U.S.C. § 552(a)(3) and 43 C.F.R. § 2.21 by improperly invoking an exception under 5 U.S.C.
20 § 552(b)(5).

21 66. The Department, Park Service, and SEKI violated 5 U.S.C. § 552(b) and 43 C.F.R.
22 § 2.21 by refusing to provide reasonably segregable portions of responsive records.

23 67. Therefore, the Department, Park Service, and SEKI violated their duty to produce
24 records in response to HSHA's proper FOIA request, in contravention of 5 U.S.C.
25 §§ 552(a)(3),(6)(A).

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**COUNT 2: FAILURE TO COMPLY WITH THE DEADLINE
TO PRODUCE RECORDS**

(In Violation of 5 U.S.C. § 552(a))

(All Defendants)

68. HSHA repeats the allegations set forth above as if stated fully herein.

69. On November 1, 2005, the Department's FOIA Appeals Office resolved HSHA's first appeal in HSHA's favor and directed the Park Service to proceed with processing HSHA's FOIA request.

70. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i) and 43 C.F.R. § 2.12, the Park Service had 20 days to process HSHA's FOIA request and produce the requested records.

71. At no time did Defendants assert the existence of any "unusual circumstances" related to the request that would allow an extension pursuant to 5 U.S.C. § 552(a)(6)(B).

72. At no time did Defendants provide HSHA with the written notice required to invoke the "unusual circumstances" basis for an extension under 5 U.S.C. § 552(a)(6)(B).

73. There are no "unusual circumstances" within the meaning of 5 U.S.C. § 552(a)(6)(B) that apply to Defendants' processing of HSHA's FOIA request.

74. Defendants did not respond until January 5, 2006, when the Park Service issued a partial "interim response" to HSHA's FOIA request.

75. In its partial "interim response," the Park Service stated that it would issue a "final response" on February 15, 2006.

76. Defendants did not issue a "final response" until March 3, 2006.

77. Moreover, the "final response" was inadequate, incomplete, and legally insufficient.

78. The Department, Park Service, and SEKI failed to produce the requested records within the 20-day timeframe required by FOIA in violation of 5 U.S.C. § 552(a)(6)(A)(i), and the Department's internal FOIA regulations, 43 C.F.R. § 2.12.

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COUNT 3: FAILURE TO RESPOND PROPERLY

(In Violation of 5 U.S.C. § 552(a))

(All Defendants)

79. HSHA repeats the allegations set forth above as if stated fully herein.

80. In the partial “interim response” of January 5, 2006, Defendants failed to state whether the documents sent to HSHA constituted all of the responsive records in the Park Service’s files or whether the Park Service intended to withhold any records.

81. In the “final response” of March 3, 2006, Defendants failed to state whether the documents sent to HSHA constitute all of the responsive records in the Park Service’s files or whether the Park Service intended to withhold any records.

82. The Department, Park Service, and SEKI failed to comply with FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and the Department’s internal FOIA regulations, 43 C.F.R. § 2.21, which require an agency to state whether the documents sent to a requesting party constitute all of the responsive records in an agency’s files or whether the agency intends to withhold any records.

COUNT 4: FAILURE TO RESPOND TO APPEAL

(In Violation of 5 U.S.C. § 552(a))

(All Defendants)

83. HSHA repeats the allegations set forth above as if stated fully herein.

84. HSHA filed its third appeal to the Department’s FOIA Appeals Office on March 31, 2006, in which it stated that the Park Service’s “final response” was inadequate and incomplete.

85. The Department acknowledged receipt of HSHA’s third appeal on April 20, 2006, at which time it assigned an appeal number (2006-118) and stated that a decision on the appeal would be reached within 20 days, as required by 5 U.S.C. § 552(a)(6)(A)(ii) and 43 C.F.R. § 2.32.

86. As of the date of the filing of this Complaint, the Department has not responded to HSHA’s third appeal, in violation of 5 U.S.C. § 552(a)(6)(A)(ii) and 43 C.F.R. § 2.32.

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**COUNT 5: FAILURE TO COMPLY WITH THE DEADLINE
TO RESPOND TO APPEAL**

(In Violation of 5 U.S.C. § 552(a))

(All Defendants)

87. HSHA repeats the allegations set forth above as if stated fully herein.

88. HSHA filed its third appeal to the Department's FOIA Appeals Office on March 31, 2006.

89. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i) and 43 C.F.R. § 2.32, the Department had 20 days to respond to HSHA's third appeal.

90. At no time did Defendants assert the existence of any "unusual circumstances" related to the request that would allow an extension pursuant to 5 U.S.C. § 552(a)(6)(B).

91. At no time did Defendants provide HSHA with the written notice required to invoke the "unusual circumstances" basis for an extension under 5 U.S.C. § 552(a)(6)(B).

92. There are no "unusual circumstances" within the meaning of 5 U.S.C. § 552(a)(6)(B) that apply to Defendants' response to HSHA's third appeal.

93. As of the date of the filing of this Complaint, Defendants have not responded to HSHA's third appeal.

94. The Department, Park Service, and SEKI failed to respond to HSHA's third appeal within the 20-day timeframe required by FOIA in violation of 5 U.S.C. § 552(a)(6)(A)(i) and 43 C.F.R. § 2.32.

COUNT 6: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

(In Violation of 5 U.S.C. § 706)

(All Defendants)

95. HSHA repeats the allegations set forth above as if stated fully herein.

96. By failing to produce the requested records, failing to respond properly, failing to comply with deadlines, and failing to resolve HSHA's appeal, all in violation of FOIA, the Department, Park Service, and SEKI have failed to act in an official capacity under color of legal authority and have unlawfully withheld agency action.

1 97. HSHA has been adversely affected and aggrieved by Defendants' failure to
2 comply with the mandates of FOIA.

3 98. Defendants' failure to produce the requested records, respond properly, comply
4 with deadlines, and resolve HSHA's appeal have injured HSHA's interests in public oversight of
5 governmental operations and constitute violations of the Defendants' statutory duties under the
6 APA.

7 99. HSHA has suffered a legal wrong as a result of the Defendants' failure to comply
8 with the mandates of FOIA.

9 100. Defendants' failure to produce the requested records constitutes agency action
10 unlawfully withheld and unreasonably delayed and is therefore actionable pursuant to the APA,
11 5 U.S.C. § 706(1).

12 101. Defendants' failure to respond properly constitutes agency action unlawfully
13 withheld and unreasonably delayed and is therefore actionable pursuant to the APA, 5 U.S.C.
14 § 706(1).

15 102. The Department's failure to resolve HSHA's appeal constitutes agency action
16 unlawfully withheld and unreasonably delayed and is therefore actionable pursuant to the APA,
17 5 U.S.C. § 706(1).

18 103. Defendants' failure to comply with deadlines constitutes agency action unlawfully
19 withheld and unreasonably delayed and is therefore actionable pursuant to the APA, 5 U.S.C.
20 § 706(1).

21 104. Alternatively, Defendants' failure to produce the requested records violates
22 FOIA's statutory mandates and is arbitrary, capricious, an abuse of discretion, and not in
23 accordance with the law, and is therefore actionable pursuant to the APA, 5 U.S.C. § 706(2).

24 105. Defendants' failure to respond properly violates FOIA's statutory mandates and is
25 arbitrary, capricious, an abuse of discretion, and not in accordance with the law, and is therefore
26 actionable pursuant to the APA, 5 U.S.C. § 706(2).

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106. The Department's failure to resolve HSHA's appeal violates FOIA's statutory mandates and is arbitrary, capricious, an abuse of discretion, and not in accordance with the law, and is therefore actionable pursuant to the APA, 5 U.S.C. § 706(2).

107. Defendants' failure to comply with deadlines violates FOIA's statutory mandates and is arbitrary, capricious, an abuse of discretion, and not in accordance with the law, and is therefore actionable pursuant to the APA, 5 U.S.C. § 706(2).

108. HSHA is entitled to judicial review under the APA, 5 U.S.C. §§ 702, 706.

109. HSHA is entitled to costs of disbursements and costs of litigation, including reasonable attorneys' and experts' fees, under the Equal Access to Justice Act, 28 U.S.C. § 2412.

RELIEF REQUESTED

WHEREFORE, Plaintiff HSHA respectfully requests that this Court:

A. declare pursuant to 28 U.S.C. § 2201 and 5 U.S.C. § 552(a)(4)(B) that Defendants' failure to disclose the records requested by HSHA is unlawful under FOIA;

B. declare pursuant to 28 U.S.C. § 2201 and 5 U.S.C. § 552(a)(4)(B) that Defendants' failure to respond properly to HSHA's FOIA request is unlawful under FOIA;

C. declare pursuant to 28 U.S.C. § 2201 and 5 U.S.C. § 552(a)(4)(B) that Defendants' failure to comply with deadlines mandated by FOIA is unlawful under FOIA;

D. declare pursuant to 28 U.S.C. § 2201 and 5 U.S.C. § 552(a)(4)(B) that the Department's failure to timely respond to HSHA's appeal is unlawful under FOIA;

G. declare pursuant to 28 U.S.C. § 2201 and 5 U.S.C. § 552(a)(4)(B) that Defendants' failure to comply with the mandates of FOIA violates the APA, 5 U.S.C. § 706;

H. issue an injunction pursuant to 5 U.S.C. § 552(a)(4)(B) requiring Defendants to produce all records responsive to HSHA's FOIA request on a schedule set forth by the Court;

I. issue an injunction preventing Defendants from destroying any records related to the General Management Plan or otherwise within the scope of HSHA's FOIA request;

J. award HSHA its costs and reasonable attorneys' and experts' fees pursuant to 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412, in amount to be proved at trial; and

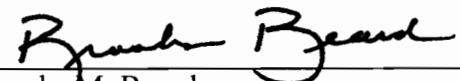
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1 K. grant such other and further relief as this Court may deem just and proper.

2 Respectfully submitted,

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4 Dated: February 22, 2008

ALISON M. TUCHER
BROOKS M. BEARD
JAMON L. BOLLOCK
MORRISON & FOERSTER LLP

6
7 By: 
8 Brooks M. Beard

9 Attorneys for Plaintiff
HIGH SIERRA HIKERS ASSOCIATION

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